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Natural Resources and Environmental Update - ADEQ Announces Public Meetings Starting October 4 on Soil Remediation Standards Rule

By Lisa A. Brautigam

The Arizona Department of Environmental Quality (ADEQ) has announced that it will hold public meetings for affected members of the public concerning proposed changes to the Soil Remediation Standards Rule. ADEQ has already conducted smaller discussions with a limited number of affected persons on the proposed changes for several months.

The latest version of the proposed rule includes, but is not limited to, the following changes to the Soil Remediation Standards Rule:

1. The risk factor for analysis of probable or possible carcinogens may be changed in limited circumstances for the residential cleanup standard. The change will result in a more stringent standard by a full order of magnitude for a cleanup involving a probable or possible carcinogen if one of the two following circumstances exist on the property:

- There are more than 10 probable or possible carcinogens present at the site; or
- When the current or foreseeable future use is a day care center, school, health care facility, or long-term care facility.

Therefore, by example, if a probable carcinogen currently has a cleanup level of 4.0 mg/kg (parts per million), that level could be reduced as low as 0.4 mg/kg if either of the two circumstances listed above applies.

Except for the term "carcinogen," no other term used in the conditions for the change in magnitude has been defined in the proposed rule.

2. A carcinogen is defined in the proposed rule as a contaminant that is "known to or, possible or probable of causing cancer in humans." In the current rule, a carcinogen is defined as particular classes of carcinogens, which are specifically identified in an appendix to the rule. This proposed rule change leaves uncertainty as to which contaminants will be considered carcinogens.
3. The proposed rule provides that a site will not be subject to the revised standards if that site has been characterized and a risk assessment or remediation has been completed within three years after the effective date of the rule.
4. The proposed rule allows ADEQ to use soil gas data to determine the concentration of the contaminant in the soil.
5. The proposed rule incorporates the Declaration of Environmental Use Restriction, which is a restrictive covenant placed on the property limiting the use of the property where a Soil Remediation Standard is not met.

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6. Certain standards for individual contaminants are changed in the proposed rule, both by increased and decreased stringencies. Review of the tables that are part of the proposed rule is critical to determine the effect of the proposed rule on a particular contaminant or industry.

The public meetings are scheduled for October 4, 2005 in Phoenix, and October 5, 2005 in Tucson. After the public meetings, we anticipate that ADEQ may hold an additional public meeting to accept comments on the proposed rule. ADEQ will then publish a proposed rule for a formal comment period.

For further information, please contact Lisa Brautigam at (602) 916-5428 or Robert Kramer at (602) 916-5464.

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